

1 FINANCE AND ADMINISTRATION CABINET

2 Department Of Revenue

3 (Amendment)

4 103 KAR 16:250. Net operating loss computation and deduction for corporations.

5 RELATES TO: KRS 141.011, 141.200, 141.201, 141.202

6 STATUTORY AUTHORITY: KRS 131.130, 141.018

7 NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the  
8 Department of Revenue to promulgate administrative regulations necessary to administer and  
9 enforce Kentucky's tax laws. This administrative regulation establishes methods of computing a  
10 corporation's net operating loss deduction and application of the deduction to subsequent taxable  
11 years on taxable net income as authorized by KRS 141.011, 141.200(11)(c),~~[(b)],~~ and KRS  
12 141.202(5).

13 Section 1. Definitions.

14 (1) "Carryforward" has the same meaning as carryover as used in KRS 141.202.

15 (2) "Combined group" is defined by KRS 141.202(2)(a).

16 (3)~~[(2)]~~ "Combined group filer" means a group of corporations filing in accordance with  
17 KRS 141.202.

18 (4)~~[(3)]~~ "Combined group return" means a return filed under KRS 141.202(3).

19 (5)~~[(4)]~~ "Corporation" is defined by:

20 (a) KRS 141.202(2)(b) for a combined group return; ~~[or]~~

21 (b) KRS 141.010(4) for a separate return for periods beginning on or after January 1, 2018;

1 or

2 (c) KRS 141.201(2)(d) for an elective consolidated return.

3 ~~(6)~~~~(5)~~ "Doing business in this state" is defined by KRS 141.010(7).

4 ~~(7)~~~~(6)~~ "Elective consolidated filer" means a corporation as defined in Section 7701(a)(3)  
5 of the Internal Revenue Code, 26 U.S.C. 7701(a)(3), filing in accordance with KRS 141.201.

6 ~~(8)~~~~(7)~~ "Elective consolidated return" means a return defined under KRS 141.201(2)(b).

7 ~~(9)~~~~(8)~~ "Net operating loss" or "NOL" means net operating loss defined under Section 172  
8 of the Internal Revenue Code as adjusted for differences between KRS Chapter 141 and the  
9 Internal Revenue Code.

10 ~~(10)~~~~(9)~~ "Nexus consolidated filer" means a corporation as defined under KRS 141.010(4)  
11 or 141.900(24), filing in accordance with KRS 141.200(8), (9), (10) and (11).

12 ~~(11)~~~~(10)~~ "Nexus consolidated return" means a return defined under KRS 141.200(9)(g).

13 ~~(12)~~~~(11)~~ "Separate return" is defined by KRS 141.201(2)(c).

14 ~~(13)~~~~(12)~~ "Separate return filer" means a corporation filing in accordance with KRS  
15 141.201(3).

16 Section 2. Computation and Application of Net Operating Loss. (1) Combined group filers,  
17 elective consolidated filers, and separate return filers shall compute net operating loss for  
18 Kentucky purposes in the following manner:

19 (a) For elective consolidated filers, the net operating loss shall be multiplied by the group's  
20 apportionment factor provided by KRS 141.120 or 141.121;

21 (b) For combined group filers, the net operating loss of each taxpayer member shall be  
22 computed in accordance with KRS 141.202(5)(c);

23 (c) For separate returns filers, the net operating loss shall be multiplied by the

1 apportionment factor provided by KRS 141.120 or KRS 141.121; and

2 (d) The apportioned net operating loss shall be available for carryforward.

3 ~~[For combined group returns and elective consolidated returns, the net operating loss shall~~  
4 ~~be multiplied by the group's apportionment factor provided by KRS 141.120 or 141.121;~~

5 ~~(b) For separate returns, the net operating loss shall be multiplied by the apportionment~~  
6 ~~factor provided by KRS 141.120 or KRS 141.121; and~~

7 ~~(c) The apportioned net operating loss shall be available for carryforward.]~~

8 (2) Elective consolidated filer net operating loss carryforward to a combined group return  
9 or separate returns. This subsection shall apply if an elective consolidated filer who has incurred  
10 net operating losses as a consolidated group will now be filing combined group returns or separate  
11 [entity]returns, and establishes how those elective consolidated net operating losses shall be  
12 treated for purposes of the combined group returns or separate [entity]returns.

13 (a) An elective consolidated filer having a net operating loss carryforward on the last  
14 elective consolidated return may carry that loss forward to combined group returns or separate  
15 returns. The following requirements shall apply to this situation:

16 1. Determine the post-apportioned elective consolidated group net operating loss  
17 carryforward. The elective consolidated group's apportionment factor provided by KRS 141.120,  
18 KRS 141.121, or KRS 141.901 shall be used to determine the post-apportioned net operating loss.

19 2. Determine the years that are in the post-apportioned elective consolidated group net  
20 operating loss carryforward. All post-apportioned net operating loss carryforwards shall be used  
21 on a first-in-first-out basis (i.e., most recent losses remain).

22 3. Determine each loss corporation's share of the net operating loss for each year in the  
23 following manner:

1           a. Allocate the post-apportioned elective consolidated group net operating loss  
2 carryforward by year to each loss corporation in each year. For a year in which the total loss  
3 generated exceeds the carryforward allocated to that year, the post-apportioned net operating loss  
4 shall be prorated for that year proportionally based on the loss generated by each member;

5           b. Add together each loss corporation's allocated share of the losses for each year it was a  
6 member of an elective consolidated group; and

7           c. Carry the separate entity net operating loss carryforward computed in clauses a. and b.  
8 of this subparagraph to the first combined group return or separate return due after the elective  
9 consolidated return.

10           (b)[4.] No prior year net operating loss carryforward shall be available to separate entities  
11 that were not doing business in this state prior to becoming part of an elective consolidated return.

12           (3) Nexus consolidated filer net operating loss carryforward to a combined group return,  
13 an elective consolidated return, or a separate return[~~period~~]. This subsection shall apply if a nexus  
14 consolidated filer ceases to exist who had incurred net operating losses as a consolidated group  
15 and establishes how those nexus consolidated net operating losses shall be treated.

16           (a) If a nexus consolidated filer ceases to exist or a member leaves the group and a  
17 consolidated net operating loss carryforward exists, that net operating loss carryforward may be  
18 carried forward to the combined group return, the elective consolidated return, or the separate  
19 returns. The following requirements shall apply to this situation:

20           1. Determine the pre-apportioned nexus consolidated group net operating loss  
21 carryforward.

22           2. Determine the years that are in the pre-apportioned nexus consolidated group net  
23 operating loss carryforward. All pre-apportioned net operating loss carryforwards shall be used on

1 a first-in-first-out basis (i.e., most recent losses remain).

2 3. Determine each loss corporation's share of the net operating loss for each year in the  
3 following manner:

4 a. Allocate the pre-apportioned nexus consolidated group net operating loss carryforward  
5 by year to each loss corporation in each year. For a year in which the total loss generated exceeds  
6 the carryforward allocated to that year, the pre-apportioned net operating loss shall be prorated for  
7 that year proportionally based on the loss generated by each member in that year;

8 b. Multiply the pre-apportioned net operating loss carryforward amounts as  
9 allocated~~[assigned]~~ to the members by the nexus consolidated group's apportionment factor for  
10 each year a net operating loss exists to determine the post-apportioned net operating loss  
11 carryforward that member may carry\_forward to~~in~~ the future. The apportionment factor  
12 calculation is provided by KRS 141.120, 141.121, or 141.901;

13 c. Add together the post-apportioned losses generated for each loss corporation during the  
14 time in which it was included in a nexus consolidated return; and

15 d. Carry the separate entity net operating loss carryforward computed in clauses a. to c. of  
16 this subparagraph to the first combined group return, elective consolidated return, or separate  
17 return due after the nexus consolidated group ceases to exist or after the member leaves the nexus  
18 consolidated group.

19 (b)[4.] No prior year net operating loss carryforward shall be available to separate entities  
20 that were not doing business in this state prior to becoming part of a nexus consolidated return. To  
21 generate a net operating loss in this state, a taxpayer shall be doing business in this state in the year  
22 in which the loss is generated.

23 Section 3. Net Operating Loss Limitation. (1) Corporations that generated net operating

1 losses may carryforward those losses to deduct against taxable net income. The deduction for  
2 losses generated for tax years beginning on or after January 1, 2018, shall be limited to eighty (80)  
3 percent of the taxable net income as allowed by Section 172 of the Internal Revenue Code.

4 (2) Nexus consolidated returns shall be subject to the fifty (50) percent limitation as  
5 required in KRS 141.200(11)(c).

6 (3) Taxpayer members of a combined group return that utilize the net operating loss of  
7 another taxpayer member that was not a member of the same combined group return in the year in  
8 which the net operating loss was originally incurred shall be subject to the fifty (50) percent  
9 limitation as required in KRS 141.202 (5)(c)3. or 4.

10 Section 4. Net operating losses by corporations included in a combined group return shall  
11 be determined in accordance with KRS 141.202(5)(c).~~[Net Operating Losses by Corporations~~  
12 ~~Included in a Combined Group Return. This section shall apply if a net operating loss is generated~~  
13 ~~by a corporation included in a combined group return.~~

14 ~~(1) Net operating losses generated by corporations included in a combined group shall not~~  
15 ~~be used to offset income of other corporations included in the combined group.~~

16 ~~(2) Net operating losses may be carried forward to subsequent years.~~

17 ~~(3) Net operating losses may only be used if the corporation that generated the loss has~~  
18 ~~taxable net income in subsequent years.~~

19 ~~(4) All net operating loss carryforwards shall be used on a first-in-first-out basis (i.e., most~~  
20 ~~recent losses remain).~~

21 ~~(5) No prior year net operating loss carryforward shall be available to separate entities that~~  
22 ~~were not doing business in this state prior to becoming part of a combined group return.]~~

23 Section 5. This administrative regulation shall apply to the computation of the net operating

loss deduction of corporations for taxable years beginning on or after January 1, 2018, except where otherwise noted in this administrative regulation.

Section 6. Examples for the computation and application of net operating losses. The following examples relate to the net operating loss computations found in Sections 2 through 4 of this administrative regulation:

(1) Example 1 – Member Leaves Nexus Consolidated Group Parent Corporation and its three (3) subsidiaries, Sub A, Sub B, and Sub C, have nexus in Kentucky. Parent Corporation files nexus consolidated group returns for Year 1 through Year 4, but Sub A will not be included in the group in Year 4. The nexus consolidated group[Parent Corporation] has a pre-apportioned nexus group NOL carryforward of \$85,000 (\$5,000 from year 1, \$40,000 from year 2, and \$40,000 from year 3 at the end of Year 3 (see Figure 1-1). Apportionment factors for each member are given below (see Figure 1-2).

Figure 1-1

	Year 1	Year 2	Year 3
Sub A Income/(Loss)	(\$25,000)	(\$25,000)	(\$15,000)
Sub B Income/(Loss)	(10,000)	(10,000)	(10,000)
Sub C Income/(Loss)	(5,000)	30,000	50,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)
Group Income/(Loss)	(\$45,000)	(\$10,000)	\$10,000
Nexus Group NOL Adjustment	45,000	25,000	15,000
Group Taxable Income	0	15,000	25,000
Accumulating Group NOL Carryforward	\$45,000	\$70,000	\$85,000

Figure 1-2

	Year 1 Apportionment Factor	Year 2 Apportionment Factor	Year 3 Apportionment Factor	[Year 4 Apportionment Factor
Nexus Group	23%	28%	32%	17%]

The following steps determine the post-apportioned net operating loss allocated [("NOL") assigned] to Sub A when it departs the group as well as the pre-apportioned NOL that will be carried forward by the group to Year 4.

(a) Determine the pre-apportioned group NOL carryforward: \$85,000 (see Figure 1-1).

(b) Determine which [~~what~~] years are in the pre-apportioned group NOL carryforward assuming all pre-apportioned NOL carryforward amounts are used on a first-in-first-out basis (i.e., most recent losses remain).

1. Year 3 Losses Remaining: \$40,000

2. Year 2 Losses Remaining: \$40,000

3. Year 1 Losses Remaining: \$5,000

(c) Allocate the pre-apportioned group NOL carryforward by year to each loss corporation in each year. For a year in which the total loss generated exceeds the carryforward allocated to that year, prorate the pre-apportioned NOL carryforward for that year proportionally based on the loss generated by each member (see Figure 1-3).



1 Figure 1-3

	Year 1	Year 2	Year 3
Sub A Loss	\$25,000	\$25,000	\$15,000
Total Losses of all Loss Corporations	\$45,000	\$40,000	\$40,000
Allocation Percentage	55.56%	62.5%	37.5%
Remaining Loss In Group Carryforward	\$5,000	\$40,000	\$40,000
Allocated Remaining Sub A Loss	\$2,777	\$25,000	\$15,000
Sub B Loss	\$10,000	\$10,000	\$10,000
Total Losses of all Loss Corporations	\$45,000	\$40,000	\$40,000
Allocation Percentage	22.22%	25.0%	25.0%
Remaining Loss In Group Carryforward	\$5,000	\$40,000	\$40,000
Allocated Remaining Sub B Loss	\$1,111	\$10,000	\$10,000
Sub C Loss	\$5,000	-	-
Total Losses of all Loss Corporations	\$45,000	\$40,000	\$40,000
Allocation Percentage	11.11%	-	-
Remaining Loss In Group Carryforward	\$5,000	\$40,000	\$40,000
Allocated Remaining Sub C Loss	\$556	-	-
Parent Corporation Loss	\$5,000	\$5,000	\$15,000
Total Losses of all Loss Corporations	\$45,000	\$40,000	\$40,000
Allocation Percentage	11.11%	12.5%	37.5%
Remaining Loss In Group Carryforward	\$5,000	\$40,000	\$40,000
Allocated Remaining Parent Loss	\$556	\$5,000	\$15,000

2

	Year 1*	Year 2	Year 3
Sub A Loss	\$2,777	\$25,000	\$15,000
Sub B Loss **	1,111	10,000	10,000
Sub C Loss **	556	-	-
Parent Corporation Loss **	556	5,000	15,000
-Group NOL	\$5,000	\$40,000	\$40,000
** Remaining Members' NOL	\$2,223	\$15,000	\$25,000

3

4 — \* Sub A:  $\$25,000/\$45,000 \times \$5,000 = \$2,777$

5 — Sub B:  $\$10,000/\$45,000 \times \$5,000 = \$1,111$

6 — Sub C:  $\$5,000/\$45,000 \times \$5,000 = \$556$

7 — Parent Corporation:  $\$5,000/\$45,000 \times \$5,000 = \$556$

8

(d) Multiply the pre-apportioned NOL carryforward amounts allocated~~assigned~~ to the member that is leaving the group by the nexus consolidated group's apportionment factors in each year an NOL carryforward exists to determine the post-apportioned NOL that member may carryforward to~~in~~ the future (see Figure 1-4).

Figure 1-4

	Year 1	Year 2	Year 3
Sub A NOL Carryforward	\$2,777	\$25,000	\$15,000
Nexus Group Apportionment Factor	23%	28%	32%
Post-Appportioned NOL Carryforward Per Year	\$638	\$7,000	\$4,800
Accumulating Total Sub A Carryforward	\$638	\$7,638	\$12,438

	Year 1	Year 2	Year 3
Sub A NOL Carryforward	\$2,777	\$25,000	\$15,000
Nexus Group Apportionment Factor	23%	28%	32%
Post-Appportioned NOL Carryforward	\$638	\$7,000	\$4,800

(e) Add the pre-apportioned NOL carryforward amounts allocated to the remaining members in the group to calculate the nexus consolidated group's carryforward amount (see Figure 1-5).

Figure 1-5

	Year 1	Year 2	Year 3
Remaining Sub B Loss	\$1,111	\$10,000	\$10,000
Remaining Sub C Loss	\$556	-	-
Remaining Parent Loss	\$556	\$5,000	\$15,000
Group Carryforward Per Year	\$2,223	\$15,000	\$25,000
Accumulating Group Carryforward	\$2,223	\$17,223	\$42,223

~~[The nexus consolidated group will carryforward a pre-apportioned NOL of \$42,223 (\$2,223+\$15,000+\$25,000) to Year 4 (see Figure 1-3), and Sub A will carryforward a postapportioned NOL of \$12,438 (\$638+\$7,000+\$4,800) to Year 4 (see Figure 1-4).]~~

(2) Example 2 – Remaining Nexus Consolidated Group Dissolves

(1) This example is a continuation of Example 1. Parent Corporation and its two (2) remaining subsidiaries, Sub B and Sub C, have nexus in Kentucky. Parent Corporation files nexus consolidated group returns for Year 1 through Year 4, but each group member will file separately in Year 5. The group has a preapportioned ~~[Parent Corporation has a preapportioned nexus group]~~ NOL carryforward of \$42,223 at the end of Year 3 (see Figure 1-3). Group apportionment factors for each year are given below (see Figure 2-2). ~~[from Example 1]. Apportionment factors for each member are given below (see Figure 2-2).]~~

Figure 2-1

	Year 1	Year 2	Year 3	Year 4	
Sub B Income/(Loss)	(\$10,000)	(\$10,000)	(\$10,000)	(\$10,000)	
Sub C Income/(Loss)	(5,000)	30,000	50,000	60,000	
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)	(30,000)	
Group Income (loss)	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	\$20,000	
Nexus Group NOL Adjustment	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	10,000	
Group Taxable Income	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	30,000	
Group NOL Generated	\$2,223*	\$15,000*	\$25,000*	\$10,000	
<u>Accumulating Group Carryforward</u> <del>[Cumulative Carryforward]</del>	<u>\$2,223</u>	<u>\$17,223</u>	<u>\$42,223</u>	\$52, 223	

\* See Figure 1 ~~[3 from Example 1]~~

Figure 2-2

	Year 1 Apportionment Factor	Year 2 Apportionment Factor	Year 3 Apportionment Factor	Year 4 Apportionment Factor
Nexus Group	23%	28%	32%	17%

The following steps determine the post-apportioned NOL that will be carried forward separately by each group member to Year 5 when the nexus consolidated group dissolves.

(a) Determine the pre-apportioned group NOL carryforward: \$52,223 (see Figure 2-1).

(b) Determine which [~~what~~] years are in the pre-apportioned group NOL carryforward assuming all NOL carryforward amounts are used on a the first-in-first-out basis (i.e., most recent losses remain).

1. Year 4 Losses Remaining: \$40,000

2. Year 3 Losses Remaining: \$12,223

(c) Allocate the pre-apportioned group NOL carryforward by year to each loss corporation in each year. For a year in which the total loss generated exceeds the carryforward allocated to that year, prorate the pre-apportioned NOL carryforward for that year proportionally based on the loss generated by each member (see Figure 2-3).

Figure 2-3

	Year 3	Year 4
<u>Sub B Loss</u>	<u>\$10,000</u>	<u>\$10,000</u>
<u>Total Losses of all Loss Corporations</u>	<u>\$25,000</u>	<u>\$40,000</u>
<u>Allocation Percentage</u>	<u>40%</u>	<u>25%</u>
<u>Remaining Loss in Group Carryforward</u>	<u>\$12,223</u>	<u>\$40,000</u>
<u>Allocated Remaining Sub B Loss</u>	<u>\$4,890</u>	<u>\$10,000</u>
<u>Parent Corporation Loss</u>	<u>\$15,000</u>	<u>\$30,000</u>
<u>Total Losses of all Loss Corporations</u>	<u>\$25,000</u>	<u>\$40,000</u>

<u>Corporations</u>		
<u>Allocation Percentage</u>	<u>60%</u>	<u>75%</u>
<u>Remaining Loss in Group Carryforward</u>	<u>\$12,223</u>	<u>\$40,000</u>
<u>Allocated Remaining Parent Loss</u>	<u>\$7,333</u>	<u>\$30,000</u>
<u>Group NOL Per Year</u>	<u>\$12,223</u>	<u>\$40,000</u>
<u>Accumulating Group NOL</u>	<u>\$12,223</u>	<u>\$52,223</u>

1

	<u>Year 3</u>	<u>Year 4</u>
<u>Sub B Loss</u>	<u>\$4,890</u>	<u>\$10,000</u>
<u>Parent Corporation Loss</u>	<u>\$7,333</u>	<u>30,000</u>
<u>Group NOL</u>	<u>\$12,223</u>	<u>\$40,000</u>

2

\* Sub B:  $\$10,000/\$25,000 \times \$12,223 = \$4,890$

3

Parent Corporation:  $\$15,000/\$25,000 \times \$12,223 = \$7,333$

4

5

(d) Multiply the pre-apportioned NOL carryforward amounts allocated[~~assigned~~] to each

6

member that is leaving the group by the nexus consolidated group's apportionment factor [~~factors~~]

7

in each year an NOL exists to determine the post-apportioned NOL that member may carry forward

8

to in [~~in~~] the future (see Figure 2-4).

Figure 2-4

	Year 3	Year 4
Sub B NOL Carryforward	\$4,890	\$10,000
Nexus Group Apportionment Factor	32%	17%
Sub B Post-Appportioned NOL Carryforward	\$1,564	\$1,700
Accumulating Sub B Post-Appportioned NOL Carryforward	\$1,564	\$3,264
Parent Corporation NOL Carryforward	\$7,333	\$30,000
Nexus Group Apportionment Factor	32%	17%
Parent Corp Post-Appportioned NOL Carryforward	\$2,346	\$5,100
Accumulating Parent Post-Appportioned NOL Carryforward	\$2,346	\$7,446

	Year 3	Year 4
[Sub B NOL Carryforward	\$4,890	\$10,000
Nexus Group Apportionment Factor	32%	17%
-Sub B Post-Appportioned NOL Carryforward	\$1,564	\$1,700
Parent Corporation NOL Carryforward	\$7,333	\$30,000
Nexus Group Apportionment Factor	32%	17%
-Parent Corp Post-Appportioned NOL Carryforward	\$2,346	\$5,100

Sub B will carryforward a post-apportioned NOL of \$3,264 (\$1,564+\$1,700) to Year 5, and Parent Corporation will carryforward a post-apportioned NOL of \$7,446 (\$2,346+\$5,100) to Year 5 (see Figure 2-4). The total post-apportioned NOLs carried forward to Year 5 is \$10,710 (see Figure 2-4).]

### (3) Example 3 – Member Leaves Elective Consolidated Group

(1) Parent Corporation and its three subsidiaries, Sub A, Sub B, and Sub C, file elective consolidated group returns for Year 1 through Year 4, but Sub A will not be included in the group in Year 4. The group has a post-apportioned [Parent Corporation has a post-apportioned elective consolidated group] NOL carryforward of \$23,500 at the end of Year 3 (see Figure 3-1).

Figure 3-1

	Year 1	Year 2	Year 3
Sub A Income/(Loss)	(\$25,000)	(\$25,000)	(\$15,000)
Sub B Income/(Loss)	(10,000)	(10,000)	(10,000)
Sub C Income/(Loss)	(5,000)	30,000	50,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)
Group Income/(Loss)	(\$45,000)	(\$10,000)	\$10,000
Group Apportionment Factor	50%	40%	30%
Taxable Net Income/(Loss)	(\$22,500)	(\$4,000)	\$3,000
NOL Generated/(Used)	22,500	4,000	(3,000)
Accumulating Group NOL Carryforward	\$22,500	\$26,500	\$23,500

The following steps determine the post-apportioned NOL allocated ~~[assigned]~~ to Sub A when it departs the group as well as the post-apportioned NOL that will be carried forward by the group to Year 4.

(a) Determine the post-apportioned group NOL carryforward: \$23,500 (see Figure 3-1).

(b) Determine which ~~[what]~~ years are in the post-apportioned group NOL carryforward assuming all post-apportioned NOL carryforward amounts are used on a first-in-first-out basis (i.e., most recent losses remain).

1. Year 3 No NOL Generated

2. Year 2 Losses Remaining: \$4,000

3. Year 1 Losses Remaining: \$19,500

(c) Prorate the post-apportioned group NOL carryforward by year to each loss corporation in each year proportionally based on the loss generated by each member (see Figure 3-2).

1 Figure 3-2

	Year 1	Year 2
Sub A Loss	\$25,000	\$25,000
Total Losses of all Loss Corporations	\$45,000	\$40,000
Allocation Percentage	55.56%	62.5%
Remaining Loss in Group Carryforward	\$19,500	\$4,000
Allocated Remaining Sub A Loss Per Year	\$10,833	\$2,500
Accumulating Sub A Loss	\$10,833	\$13,333
REMAINING GROUP		
Sub B Loss	\$10,000	\$10,000
Total Losses of all Loss Corporations	\$45,000	\$40,000
Allocation Percentage	22.22%	25%
Remaining Loss in Group Carryforward	\$19,500	\$4,000
Allocated Remaining Sub B Loss Per Year	\$4,333	\$1,000
Sub C Loss	\$5,000	-
Total Losses of all Loss Corporations	\$45,000	\$40,000
Allocation Percentage	11.11%	-
Remaining Loss in Group Carryforward	\$19,500	\$4,000
Allocated Remaining Sub C Loss Per Year	\$2,167	-
Parent Corporation Loss	\$5,000	\$5,000
Total Losses of all Loss Corporations	\$45,000	\$40,000
Allocation Percentage	11.11%	12.5%
Remaining Loss in Group Carryforward	\$19,500	\$4,000
Allocated Remaining Parent Corporation Loss Per Year	\$2,167	\$500
Remaining Group NOL Per Year	\$8,667	\$1,500
Accumulating Remaining Group NOL Carryforward	\$8,667	\$10,167

2

	Year 1*	Year 2**
Sub A Loss	\$10,833	\$2,500
Sub B Loss ***	4,333	1,000
Sub C Loss ***	2,167	-
Parent Corporation Loss ***	2,167	500
Group NOL	\$19,500	\$4,000



*** Remaining Members' Loss (per year)	\$8,667	\$1,500
--	---------	---------

\* Sub A:  $\$25,000/\$45,000 \times \$19,500 = \$10,833$

Sub B:  $\$10,000/\$45,000 \times \$19,500 = \$4,333$

Sub C:  $\$5,000/\$45,000 \times \$19,500 = \$2,167$

Parent Corporation:  $\$5,000/\$45,000 \times \$19,500 = \$2,167$

\*\* Sub A:  $\$25,000/\$40,000 \times \$4,000 = \$2,500$

Sub B:  $\$10,000/\$40,000 \times \$4,000 = \$1,000$

Parent Corporation:  $\$5,000/\$40,000 \times \$4,000 = \$500$

The elective consolidated group will carryforward a total post-apportioned NOL of \$10,167 to Year 4, and Sub A will carryforward a total post-apportioned NOL of \$13,333 to Year 4 (see Figure 3-2).

#### (4) Example 4 – Remaining Elective Consolidated Group Dissolves

This example is a continuation of Example 3.

Parent Corporation and its two remaining subsidiaries, Sub B, and Sub C, file elective consolidated group returns for Year 1 through Year 4, but each group member will either file separately or as part of a combined group in Year 5. The elective consolidated group has a post-apportioned NOL carryforward of \$13,167 at the end of Year 4. ~~[in Year 5. Parent Corporation has a post-apportioned elective consolidated group NOL carryforward of \$10,167 at the end of Year 3.]~~ (see Figure 4-1).

Figure 4-1

	Year 1	Year 2	Year 3	Year 4
Sub B Income/(Loss)	(10,000)	(10,000)	(10,000)	(15,000)
Sub C Income/(Loss)	(5,000)	30,000	50,000	25,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)	(20,000)
Group Income/(Loss)	N/A	N/A	N/A	(\$10,000)
Group Apportionment Factor	N/A	N/A	N/A	30%
NOL Remaining per year*[Generated (Used/Remaining Per Year)]	\$8,667**	\$1,500*	\$ -	3,000
Accumulating Group NOL Carryforward	\$8,667**	\$10,167	\$10,167	\$13,167

\* See Figure 3-2 from Example 3

\*\* Year 1 NOL of \$8,667 is already reduced by the \$3,000 NOL utilized in year 3 (See Figure 3-1)

The following steps determine the post-apportioned NOL that will be carried forward separately by each group member to Year 5 when the elective consolidated group dissolves.

(a) Determine the post-apportioned group NOL carryforward: \$13,167 (see Figure 4-1).

(b) Determine which~~what~~ years are in the post-apportioned group NOL carryforward assuming all post-apportioned NOL carryforward amounts are used on a first-in-first-out basis (i.e., most recent losses remain).

1. Year 4 Losses Remaining: \$3,000

2. Year 3 No NOL Generated

3. Year 2 Losses Remaining: \$1,500

4. Year 1 Losses Remaining: \$8,667

(c) Prorate the post-apportioned group NOL carryforward by year to each loss corporation in each year proportionally based on the loss generated by each member (see Figure 4-2).

1 Figure 4-2

	Year 1*	Year 2*	Year 4
<u>Sub B Loss</u>			<u>\$15,000</u>
<u>Total Losses of all Loss Corporations</u>			<u>\$35,000</u>
<u>Allocation Percentage</u>			<u>42.85%</u>
<u>Remaining Loss in Group Carryforward</u>			<u>\$3,000</u>
<u>Allocated Remaining Sub B Loss Per Year</u>	<u>\$4,333</u>	<u>\$1,000</u>	<u>\$1,286</u>
<u>Accumulating Sub B NOL Carryforward</u>	<u>\$4,333</u>	<u>\$5,333</u>	<u>\$6,619</u>
<u>Allocated Remaining Sub C Loss Per Year</u>	<u>\$2,167</u>	<u>=</u>	<u>=</u>
<u>Accumulating Sub C NOL Carryforward</u>	<u>\$2,167</u>	<u>\$2,167</u>	<u>\$2,167</u>
<u>Parent Corporation Loss</u>			<u>\$20,000</u>
<u>Total Losses of all Loss Corporations</u>			<u>\$35,000</u>
<u>Allocation Percentage</u>			<u>57.15%</u>
<u>Remaining Loss in Group Carryforward</u>			<u>\$3,000</u>
<u>Allocated Remaining Parent Loss Per Year</u>	<u>\$2,167</u>	<u>\$500</u>	<u>\$1,714</u>
<u>Accumulating Parent NOL Carryforward</u>	<u>\$2,167</u>	<u>\$2,667</u>	<u>\$4,381</u>
<u>Accumulating Group NOL Carryforward</u>	<u>\$8,667</u>	<u>\$10,167</u>	<u>\$13,167</u>

2  
3 \* See Figure 3-2 from Example 3

4 NOTE: Year 3 is omitted from Figure 4-2. The \$3,000 NOL utilized in Year 3 was accounted  
5 for in the Year 1 remaining losses.  
6

	Year 1**	Year 2**	Year 4*
<u>Sub B Loss</u>	<u>4,333</u>	<u>1,000</u>	<u>1,286</u>
<u>Sub C Loss</u>	<u>2,167</u>	<u>-</u>	<u>-</u>
<u>Parent Corporation Loss</u>	<u>2,167</u>	<u>500</u>	<u>1,714</u>
<u>Group NOL</u>	<u>\$8,667</u>	<u>\$1,500</u>	<u>\$3,000</u>

7 \* Sub B:  $\$15,000/\$35,000 \times \$3,000 = \$1,286$

8 Parent Corporation:  $\$20,000/\$35,000 \times \$3,000 = \$1,714$

9 \*\* See Figure 3-2 from Example 3  
10

~~[Sub B will carryforward a post-apportioned NOL of \$6,619 (\$4,333+\$1,000+\$1,286) to Year 5, Sub C will carryforward a post-apportioned NOL of \$2,167 to Year 5, and Parent Corporation will carryforward a post-apportioned NOL of \$4,381 (\$2,167+\$500+\$1,714) to Year 5 (see Figure 4-2). The total post-apportioned NOLs carried forward to Year 5 is \$13,167 (see Figure 4-2).]~~

(5) Example 5: Sharing of Kentucky Net Operating Losses within a Combined Group

(a) Parent Corporation and its three subsidiaries, Sub A, Sub B, and Sub C, file a combined return in 2019, the first year in which a combined return is required. All entities have nexus in Kentucky and are taxpayer members of the combined group. The combined group has apportionable group net income of \$50,000 in 2019. The 2019 apportionment factors for the members of the group are shown in Figure 5-1 below. The members also report the following apportioned NOL carryforwards from 2017 and 2018 (Figure 5-1).

Figure 5-1

	Parent	Sub A	Sub B	Sub C
2019 Group Income	\$50,000	\$50,000	\$50,000	\$50,000
2019 Apportionment Factor	20%	10%	10%	5%
2019 Taxable Income	\$10,000	\$5,000	\$5,000	\$2,500
2017 NOL Carryforward*	\$2,000	\$12,000	\$3,500	\$0
2018 NOL Carryforward*	\$5,000	\$0	\$1,700	\$0

\* 2017 (and earlier years) NOL can be applied against 100% of taxable income. 2018 (and later years) NOL is limited to 80% of net income.

The following calculation determines the maximum allowable NOL deduction available to each entity (See Figure 5-2). This amount may exceed (or be less than) the actual amount of prior year NOL available within the group. The maximum allowable NOL deduction available to each entity is the sum of:

1. ~~[4]~~ NOLs generated by the entity in 2017 and previous years; plus
2. ~~[2]~~ NOLs generated by the entity in 2018, up to a maximum of eighty (80) percent ~~[80%]~~ of the entity's 2019 taxable income; plus
3. ~~[4]~~ NOLs generated by other taxpayer members of the group in years before a combined return was required, up to a maximum of fifty (50) percent ~~[50%]~~ of the 2019 taxable income of the entity that is utilizing the NOL. (Note that losses from years in which a combined report was required may be shared between taxpayer members of the combined group without reference to the 50% limitation, provided that the entities sharing the losses were members of the combined group in the year the loss was generated).

Figure 5-2

NOL Limitations	Parent	Sub A	Sub B	Sub C
2017 and Prior NOLs (Up to 100% of 2019 taxable income)	\$ 10,000	\$5,000	\$5,000	\$2,500
Max Amount of Allowable 2018 NOL (Up to 80% of 2019 Taxable Income)	\$ 8,000	\$ 4,000	\$4,000	\$2,000
Max of Allowable Shared Amount (Up to 50% of 2019 Taxable Income)	\$ 5,000	\$ 2,500	\$2,500	\$1,250

The following steps determine the utilization of the available NOL by each entity and each entity's resulting taxable income and NOL carryforward to 2020 (See Figure 5-3).

1        1) Subtract the entity's available 2017 (and earlier) NOL amount from the entity's 2019  
2 taxable income on a first-in-first-out basis (i.e. most recent losses remain), up to one-hundred (100)  
3 percent [~~100%~~] of 2019 taxable income;

4        2) Subtract the entity's 2018 NOL up to the maximum allowable 2018 NOL (80% of 2019  
5 taxable income) from the amount remaining after Step 1;

6        3) Subtract the NOL amounts available to be shared from other taxpayer members of the  
7 combined group up to the maximum allowable shared amount (50% of 2019 taxable income) from  
8 the amount remaining after Step 2.

9        4) In no case can the utilization of NOLs reduce taxable income below zero (0). If group  
10 NOLs exceed available income, the remaining NOL may be carried forward.

11  
12 Figure 5-3  
13

	Parent	Sub A	Sub B	Sub C
2019 Taxable Income	\$10,000	\$ 5,000	\$5,000	\$2,500
Less: Entity's 2017 NOL	(\$ 2,000)	(\$5,000)	(\$3,500)	\$0
Taxable Income Remaining	\$ 8,000	\$0	\$1,500	\$2,500
Less: Entity's 2018 NOL	(\$ 5,000)	N/A	(\$1,500)	\$0
Taxable Income Remaining	\$ 3,000	\$0	\$ 0	\$2,500
Less: Shared NOL	(\$ 3,000)	N/A	N/A	(\$1,250)
Net Taxable Income After NOLD	\$0	\$0	\$0	\$ 1,250
NOL Carryforward to 2020	\$0	\$ 2,750*	\$200**	\$0

\*After sharing of NOLs, Sub A carries forward \$2,750 of its 2017 NOL into 2020 [~~(\$12,000 - \$5,000 (used by Sub A) - \$3,000 (shared with and used by Parent) - \$1,250 (shared with and used by Sub C))~~].

\*\*Sub B carries forward \$200 of its 2018 NOL into 2020 (\$1,700 - \$1,500)

(6) Example 6: Sharing of Kentucky Net Operating Losses within a Combined Group that includes a Non-Taxpayer Member.

(1) Parent Corporation and its three subsidiaries, Sub A, Sub B, and Sub C, file a combined return in 2020. Sub A does not have nexus in Kentucky and is included in the group under the unitary principle. The combined group has apportionable group net income of \$50,000 in 2020. The 2020 apportionment factors for the members of the group are shown below. The members also report the following post-apportioned NOL carryforwards from 2018, a year in which each entity filed separately, and 2019, a year in which the group filed a combined return (Figure 6-1).

Figure 6-1

	Parent	Sub A	Sub B	Sub C
2020 Group Income	\$50,000	\$50,000	\$50,000	\$50,000
2020 Apportionment Factor	20%	0%	10%	5%
2020 Taxable Income	\$10,000	\$0	\$5,000	\$2,500
2018 NOL Carryforward	\$0	\$12,000	\$0	\$0
2019 NOL Carryforward	\$7,500		\$5,000	\$1,000

The maximum allowable NOL deduction available to each entity is equal to eighty (80) percent[80%] of its taxable income (See Figure 6-2).

Figure 6-2

NOL Limitations	Parent	Sub B	Sub C
80% of 2020 Taxable Income	\$8,000	\$4,000	\$2,000

Figure 6-3 shows the utilization of the available NOL deduction by each entity and each entity's resulting taxable income and NOL carryforward to 2021. As the 2019 NOLs were generated in a year in which a combined report was required, they can be shared among taxpayer members of the group, subject to the eighty (80) percent[80%] limitation. Since Sub A does not have Kentucky nexus in 2020, it is not a taxpayer member and therefore its 2018 NOLs cannot be utilized by other group members. Sub A cannot utilize its 2018 losses until it has Kentucky source income.

Figure 6-3

	Parent	Sub A	Sub B	Sub C
2019 Taxable Income	\$10,000	\$0	\$5,000	\$2,500
Less: Entity's Own 2019 NOL	(\$ 7,500)	n/a	(\$4,000)	(\$1,000)
Taxable Income Remaining	\$ 2,500	\$0	\$1,000	\$1,500
Less: Shared NOL	(\$ 500)	N/A	\$ 0	(\$ 500)
Taxable Income Remaining	\$ 2,000	\$0	\$1,000	\$1,000
2018 NOL Remaining	\$0	\$12,000	\$0	\$0
2019 NOL Remaining	\$0	\$0	\$0**	\$0

\*\*Figure 6-4 shows how Sub B's NOLs were shared among the group.




Figure 6-4

Sub B 2019 NOL	\$5,000
Offset Max of 80% of Sub B 2020 Income	(\$4,000)
NOL Remaining	\$1,000
Utilized by Parent (up to 80% limit)	(\$ 500)
NOL Remaining	\$ 500
Utilized by Sub C	(\$ 500)
NOL Remaining	\$ 0

103 KAR 16:250

APPROVED:

  
\_\_\_\_\_  
DANIEL BORK, COMMISSIONER  
Department of Revenue  
Finance and Administration Cabinet

  
\_\_\_\_\_  
DATE APPROVED BY AGENCY

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on July 25, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Todd Renner, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 782-6081 (telephone), (502) 564-3875(fax), [Todd.Renner@ky.gov](mailto:Todd.Renner@ky.gov)(email).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 103 KAR 16:250

Contact Person: Todd Renner

Phone Number: (502) 782-6081

Email: [Todd.Renner@ky.gov](mailto:Todd.Renner@ky.gov)(email)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance on the computation of a corporation's net operating loss deduction and application of the deduction to subsequent taxable years.

(b) The necessity of this administrative regulation: This amended administrative regulation is needed to provide guidance for computing a corporation's net operating loss deduction on corporation income tax returns filed by combined group filers, elective consolidated return filers, nexus consolidated filers and separate return filers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides guidance for computing a corporation's net operating loss deduction and also removes outdated guidance from regulatory language.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS 141.201, KRS 141.202, KRS 141.011, KRS 141.120, and KRS 13A.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This regulation provides guidance for computing a corporation's net operating loss deduction under law changes enacted by the 2019 General Assembly in HB 458, and also removes outdated guidance from regulatory language.

(b) The necessity of the amendment to this administrative regulation: This regulation provides guidance for computing a corporation's net operating loss deduction under law changes enacted in 2018 HB 487 and 2019 HB 458.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c). This regulation provides guidance for computing a corporation's net operating loss deduction and also removes outdated guidance from regulatory language.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d). This regulation will insure that the Department of Revenue is in compliance with KRS 141.201, KRS 141.202, KRS 141.011, KRS 141.120, KRS 141.121, and KRS 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Corporations claiming a net operating loss deduction are affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Corporations will have to follow the amendments to this regulation regarding the computation of the net operating loss deduction taken by combined group filers, elective consolidated filers, nexus consolidated filers and separate return filers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Indeterminable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question. More accurate corporation income tax returns will result.

(3): A greater chance of correctly computing the net operating loss deduction will occur.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Minimal costs for the Department of Revenue to administer

(b) On a continuing basis: Minimal costs for the Department of Revenue on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation and enforcement will come from the Department of Revenue's baseline budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This amended regulation will not require any increase in fees or additional funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because all corporation income taxpayers with a net operating loss deduction will be able to correctly compute the deduction under this amended administrative regulation.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 16:250

Contact Person: Todd Renner

Phone Number: (502) 782-6081

Email: Todd.Renner@ky.gov(email)

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130, KRS 141.011, KRS 141.120, KRS 141.121, KRS 141.200, KRS 141.201, and KRS 141.202

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be small increase of expenditures for the Department of Revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None. The impact on revenues generated by the corporation income tax is indeterminable. The enactment of combined reporting, effective for taxable years beginning on or after January 1, 2019, is a significant change.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Indeterminable.

(c) How much will it cost to administer this program for the first year? An indeterminable increase in expenses for the Department of Revenue will occur in the first year.

(d) How much will it cost to administer this program for subsequent years? Indeterminable.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: